

SERVICE DATE - AUGUST 29, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33431

COACH USA, INC., AND K-T CONTRACT SERVICES, INC.
— CONTROL AND MERGER EXEMPTION —
GRAY LINE TOURS OF SOUTHERN NEVADA

Decided: August 27, 2001

On January 13, 2000, Nevada Coaches, LLC (Nevada Coaches), filed a request asking us to investigate certain activities of Stagecoach Holdings plc (Stagecoach) and its corporate subsidiaries Coach USA, Inc., and Gray Line Tours of Southern Nevada (Gray Line) (collectively, the Companies), charging that Gray Line engaged in predatory conduct by pricing in a manner designed to monopolize the market for sightseeing tours in the vicinity of Las Vegas, NV. On February 22, 2000, Nevada Coaches filed a motion to supplement its earlier filing, which we will accept. The Companies have replied to both filings.

BACKGROUND

In its January 13 filing, Nevada Coaches states that it competes with Gray Line and other bus companies in the passenger transportation market in Las Vegas and Clark County, NV, and that Gray Line and one of its corporate siblings, K-T Contract Services, Inc., together form the largest bus company in that area. The main area of concern to Nevada Coaches involves sightseeing tours from Las Vegas to Hoover Dam, which are asserted to amount to approximately 70% of the sightseeing market in the area. According to Nevada Coaches, the most difficult season for local bus and sightseeing companies is winter (December, January, and February), when tourism is low, cash flow is greatly reduced, and a considerable degree of financial wherewithal is needed just to remain in the market.

Nevada Coaches alleges that, between December 1999 and February 2000, Gray Line unlawfully priced its Hoover Dam tours at deeply discounted, below-cost rates in an attempt to monopolize the Las Vegas sightseeing market. Nevada Coaches claims that Gray Line was able to engage in such a tactic because of the financial market power of Gray Line's parent corporation, Stagecoach, and Stagecoach's subsidiaries.¹ Nevada Coaches asserts that Gray Line's Hoover Dam tour rate of \$19.50 for two persons (which is substantially below the earlier rate of \$29.50 per person and a previously discounted rate of \$19.00 per person) would not provide sufficient revenues for Gray Line to recover even the variable costs of fuel and drivers' wages associated with such tours, let alone any fixed costs. Accordingly, Nevada Coaches submits that Gray Line's winter discount rate reflects a design to price all competitors out of the market in the winter season, when the market is weak, and leave Gray Line with a monopoly market position when tourism rebounds.

¹ In a decision served December 4, 1997, in this proceeding (1997 Decision), the Board, through an exemption, authorized Coach to control Gray Line. Subsequently, pursuant to authority granted by the Board in Stagecoach Holdings PLC—Control—Coach USA, Inc., et al., STB Docket No. MC-F-20948 (STB served July 22, 1999), Stagecoach acquired control of Coach and its motor passenger carrier subsidiaries, including Gray Line.

The Companies dispute Nevada Coaches' claim that their pricing strategy is predatory. They state that the fare at issue was designed to contribute to Gray Line's revenues while attracting discretionary travelers who might not otherwise purchase a tour during the off-season. According to the Companies, Gray Line's 55-seat buses were attracting an average of only 19 passengers per tour in the winter months, and the company needed to increase revenues by increasing ridership, even if that could be done only at deeply discounted prices. To attract passengers that might not otherwise take the trip, Gray Line distributed a limited number of discount coupons, valid only for the off-season, to certain Las Vegas area hotels, to be used to supplement the revenues generated by the passengers without a coupon, who were still required to pay the regular fare. Had it not issued the coupons to fill up empty seats, the Companies argue, ridership and overall revenues per trip would have been even lower.

DISCUSSION AND CONCLUSIONS

Because of the inherent competitiveness of the bus industry, reflected in the ease of entry into and exit from its markets, Congress, in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, withdrew all federal regulation of the reasonableness of motor passenger carrier rates. Thus, as Nevada Coaches recognizes, passenger carriers may charge whatever they wish to charge, and Gray Line's argument that Nevada Coaches' complaint represents simply a back-door challenge to passenger carrier rates is not without force. Indeed, if we have any regulatory authority at all here, it would be to consider whether Gray Line and the Coach family, through the consolidation that we authorized, have obtained market power that Gray Line is now abusing by engaging in predatory conduct.

A showing of predation is very difficult to make. "Predation, as commonly understood, is the sacrifice of present revenues for the purpose of driving rivals out of a market and recouping the losses through higher profits earned in the absence of competition." Lawfulness of Vol. Discount Rates—Mot. Com. Car., 365 I.C.C. 711, 713-14 (1982). Predation is an inherently uncertain strategy, because even if a competitor does intentionally incur short-run losses, drive out competition, and then raise prices, it will be successful only if it can keep out of the market potential entrants eager to share some of the higher profits. Because it is rarely possible to keep out new competitors, "there is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful." Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 589 (1986). Indeed, "without barriers to entry it would presumably be impossible to maintain supracompetitive prices for an extended time." Id. at 591 n.15. As Congress has recognized, and as we found in approving the Gray Line/Coach merger (1997 Decision at 5), the bus industry is characterized by pervasive competition and low entry barriers.

Here, Nevada Coaches has not shown that Gray Line has acted improperly. Gray Line's offering of a promotional fare was similar to offerings made on a regular basis by other bus companies and other transportation providers in order to fill space that would otherwise be empty. The Hoover Dam bus tours would have run with or without the promotion, and any revenues that the promotion brought in are likely to be revenues that Gray Line would otherwise have forgone. Thus, Gray Line has shown that it had non-predatory, sound business reasons for offering deeply discounted winter rates.

Moreover, current competitive circumstances confirm the virtual impossibility of a successful predation campaign in the tour bus market for Hoover Dam. The information publicly available via the internet reveals that, as of the end of July 2001, at least seven companies were

offering bus tours from Las Vegas to Hoover Dam. Thus, notwithstanding any effect that Gray Line's promotion may have had on Nevada Coaches, it did not adversely affect competition in the market.

Accordingly, we find no basis for moving this matter forward, and the request for investigation will be dismissed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Nevada Coaches' motion to supplement its informal complaint is granted.
2. Nevada Coaches' request for investigation is dismissed.
3. This decision is effective on August 29, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary